

**(1955) 10 BOM CK 0033**

**Bombay High Court**

**Case No:** Criminal Revision Application No. 1119 of 1955

Sadashiv Devji

APPELLANT

Vs

The State

RESPONDENT

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**Date of Decision:** Oct. 3, 1955

**Acts Referred:**

- Bombay Police Act, 1951 - Section 10
- Bombay Prevention of Gambling Act, 1887 - Section 4, 5, 6
- Criminal Procedure Code, 1898 (CrPC) - Section 362(1), 362(4), 4
- Evidence Act, 1872 - Section 114

**Citation:** AIR 1956 Bom 168 : (1956) CriLJ 382

**Hon'ble Judges:** Vyas, J; Dixit, J

**Bench:** Division Bench

**Advocate:** I.C. Dalal and N.C. Shah, for the Appellant; Y.V. Chandrachud, Addl. Assist. Govt. Pleader, for the Respondent

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**Judgement**

Dixit, J.

Five accused persons, including the present applicant who was accused No. 1 in the Court below, were prosecuted in the Court of the Additional Chief Presidency Magistrate, Esplanade, Bombay, for offences under Sections 4(a) & 5, Bombay Prevention of Gambling Act, 1887.

Upon the evidence adduced before him, the learned Magistrate convicted the present applicant of the offences under Sections 4 (a) and 5 of the Act and sentenced him as regards the charge-under Section 4 (a) to suffer rigorous imprisonment for a period of one month and to pay a fine of Rs. 200/-, in default to suffer rigorous imprisonment for a further period of one month, but he did not impose a separate sentence against the applicant u/s 5 though he convicted him of that offence.

Feeling aggrieved by the convictions and the sentence imposed upon him, the first accused has come up in revision and upon his behalf Mr. I.C. Dalai has contended that the convictions and the sentence imposed upon the first accused cannot be supported.

2. Now, the facts leading, up to the prosecution are simple. Sub-Inspector Mehendale is attached to the Special Squad, C.B.I., C.I.D., Bombay. He is specially empowered u/s 6, Bombay Prevention of Gambling Act. On 6-4-1955 at about 6-10 p.m. in consequence of information received by him, he sent for one Shantaram Damodar Ghag to his office.

Shantaram's person was searched in the presence of the Panchas and upon his person were a few annas and a handkerchief. The money which was found upon his person was taken charge of by Sub-Inspector Mehendale in the presence of the panchas, but the handkerchief which was on his person, was allowed to remain with him. A one-rupee note was then given to Shantaram again in the presence of the panchas and its number was noted in a panchanama made at the time.

Shantaram was then instructed to go to a room which is room No. 1-A in Rodrigue's chawl, Bhattipada Road, Bhandup, Greater Bombay, in order to lay a bet at that place on figures 0-6 open to close with the money which was given to him. A panchanama was made and Sub-Inspector Mehendale, accompanied by the two panchas, Shantaram and the staff then left the office in a police van.

The van then proceeded upon its journey and arrived near the petrol pump on Agra Road at a distance of about 15 to 20 minutes' walk from the chawl in question. Sub-Inspector Mehendale and the staff, who were then dressed in plain clothes, got down from the police van and started walking towards the Rodrigue's Chawl with Shantaram walking ahead of them. Sub-Inspector Mehendale, the panchas and the staff followed Shantaram.

Shantaram then entered the Rodrigue's Chawl while the Sub-Inspector, the panchas and the staff stood at a distance of some 50 paces from the said chawl and at this time Sub-Inspector Mehendale and the panchas saw Shantaram entering the Chawl. Shantaram then entered room No. 1-A on the ground floor of the Chawl when he found accused No. 1 seated on a chair in front of a table inside the room. Accused No. 5 was seated on the floor near the entrance of the room.

Shantaram thereupon approached accused No. 1 and gave his name as Shantaram and figures 0-6 open to close and handed over to him the one-rupee note which was given to him by Sub-Inspector Mehendale. Accused No. 1 accepted Shantaram's bet and recorded the same on a slip of paper with a pencil. Shantaram then came out of the chawl and gave Sub-Inspector Mehendale a signal as previously arranged and went away to his residence.

Sub-Inspector Mehendale thereafter raided the room in question, the panchas and the staff accompanying him at the time. When Sub-Inspector Mehendale, the panchas and the staff went there, they found all the five accused persons inside the room with accused No. 1 seated on a chair near a table, accused Nos. 2 and 3 standing in front of accused No. 1, accused No. 4 being seated on a cot and accused No. 5 upon the floor of the room near the entrance of the room.

The persons of the accused were then searched in the presence of the panchas and a sum of Rs. 13-11-0 including the marked rupee-note was found in the left side front pocket of accused No. 1's shirt. Accused No. 1 was holding an English Booklet which was in front of accused No. 1 which was upon the table and upon this booklet a chit (Ext. B/1) containing a record of satta bets written in Kanarese language was found. Various other articles were then found at the place and in due course the accused were charge-sheeted before the Magistrate.

3. in support of the prosecution case, the prosecution gave evidence of Sub-Inspector Mehendale, the punter Shantaram, the panch Sltaram and a witness by name Shetty who read the names in Kanarese on the satta chits. This evidence was directed to establish the prosecution case.

4. Accused No. 1 denied that he had accepted satta bets in room No. 1-A in the Rodrigue's Chawl on the day in question. He denied that Shantaram approached, and laid bets with him & he also denied that he recorded Shantaram's bet on a slip of paper with a pencil. He further denied that, when the room was raided, he was found sitting on a chair near the table.

He stated that he did not know whether any booklet was found on the table and he denied that he was holding satta chit (Exh. B/1). It is unnecessary to refer to the statements of the other accused persons because they have been acquitted. The learned Magistrate accepted the evidence for the prosecution and Mr. Dalai contends that the convictions recorded against the accused and the sentence imposed upon him under Section 4(a) cannot be supported.

His first contention is that this was a case in which the learned Magistrate should have kept notes of evidence and since the Magistrate did not do so, the applicant has been prejudiced because he does not know what the evidence was against him. Now, this was a case tried by a Presidency Magistrate and to such a case Section 362(4), Criminal P.C. will apply.

We have recently had occasion to consider Section 362(4) and this Court has taken the view that u/s 362(4) of the Criminal Procedure Code, a Presidency Magistrate is not required to record evidence in cases not covered by Section 362(1) of the Code. Therefore, u/s 362(4) of the Code, a Presidency Magistrate has a right to refuse to record evidence, and once the Magistrate decides not to record the evidence, his decision is not subject to a review by the High Court.

In a limited sense, there is a discretion in a Presidency Magistrate u/s 362(4) of the Code, namely, that he may record evidence if he chooses to do so even in a non-appealable case. Except in this limited sense, Section 362(4) does not envisage any discretion in a Presidency Magistrate, vide -- [State Vs. Iris Chandrabala Premnath](#), .

Now, in this case, the prosecution tendered the evidence of four witnesses viz., Sub-Inspector Mehendale, Shantaram the punter, Sitaram panch and Anant Shetty a witness who react the names in Kanarese on the Satta Chits: The evidence was commenced on 5-9-1955 and concluded on 12-9-1955 and on that day the statement of the accused was recorded. The case was then adjourned to 13-9-1955 and on the 14th September the learned Magistrate delivered a judgment convicting the applicant of the offence under Sections 4(a) and 5.

5. Now, the judgment which we have to consider is a judgment running into about 12 pages giving in detail the story for the prosecution and also the defences of the several accused. The Judgment also deals with the evidence tendered for the defence also in detail and considers the questions raised on behalf of the accused.

If a judgment such as this, which runs into 12 pages, does not do justice to the evidence in the case and the defence of the accused, It is impossible to conceive of a judgment which would do justice to the evidence as recorded in this case.

Under Section 362(4) of the Code, a Magistrate is not bound to keep a record of the notes of evidence and as we have pointed out in "Iris Chandrabala"s case (A)", a Magistrate would be well advised to keep notes of evidence for the purpose of enabling him to write a proper judgment and since the evidence was commenced as early as 5-9-1955 and the judgment was recorded on 14-9-1955, it is impossible to say that the Magistrate had not the assistance of notes of evidence with him when he recorded the judgment in question.

It is also relevant to point out that a Magistrate is not bound to keep upon the record of the case the notes of evidence taken by him. It is open to him to keep them or not to keep them and although normally it would be desirable for a Magistrate to keep notes of evidence in a case which is of a complicated nature and involve questions of law and fact, it is entirely for a Magistrate to decide as to whether or not he should keep notes of record of the evidence in the case.

Looking to the judgment as recorded in this case, we are satisfied that the Magistrate must have considered adequately and properly the evidence as was led before him and we are not satisfied that the ground urged in support of the application has been made out. The first point, therefore, fails.

6. The second point taken by Mr. Dalai is that in this case the authority which enabled Sub-Inspector Mehendale to take action in accordance with Section 6 was not a valid authority because it was not signed by the Commissioner of Police as

required by Section 6.

Now, the authority which was given to Sub-Inspector Mehendale was an authority signed by Mr. W.K. Patil, the Deputy for the Commissioner of Police. The authority is not therefore, Issued by W.K. Patil as Deputy Commissioner of Police, but the authority has been issued by the Commissioner of Police, though signed for him by Mr. W.K. Patil, Mr. Dalai argues that inasmuch as the authority has not been signed by the Commissioner of Police, the authority is invalid.

In this connection, the learned Magistrate pointed out that Mr. W.K. Patil must have been authorised by the Commissioner of Police to sign for him, having regard to Section 114, illustration (e), Evidence Act. That section shows that the Court may presume the existence of any fact and under illustration (e) there is a presumption that an official act has been regularly performed.

Apart from this Mr. Chandrachud has pointed out Section 10, Bombay Police Act, 1951 which by Sub-section (2) provides that

"every such Deputy or Assistant Commissioner shall, under the Orders of the Commissioner, exercise and perform any of the powers, functions and duties of the Commissioner to be exercised or performed by him under the provisions of this Act or any other law for the time being in force in accordance with the general or special orders of the State Government made in this behalf".

This shows that it is open to the Commissioner of Police to permit a Deputy Commissioner to exercise and perform any of the powers, functions and duties to be exercised by him and here comes in effect of illustration (e) to Section 114. In our view there is no substance in this contention either.

7. The next contention raised by Mr. Dalai is that this is a case in which there ought to have been adopted by the Magistrate a procedure relating to warrant cases and in this connection he relies upon Section 4(w) of the Code of Criminal Procedure. In this case, the accused was charged under Sections 4(a) and 5 of the Prevention of Gambling Act and for Section 4(w) to apply, it must be a case in which the sentence is one which, exceeds six months.

In view of this consideration, we think that there is no substance in this contention. But the argument of Mr. Dalai is that we should combine the two sentences which may be imposed u/s 4 (a) and Section 5. We do not think that this is the correct meaning to be given to Section 4(w) of the Criminal Procedure Code. In the result, therefore, this contention must also fail.

8. Upon the merits of the matter, Mr. Dalai has not addressed to us any serious argument, but he contended that the evidence of Anant Shetty was inadmissible inasmuch as he made certain statements to the Sub-Inspector of Police in the course of investigation and that evidence would be inadmissible.

If the learned Magistrate had relied upon that evidence, the matter would have been different. But Anant Shetty has been examined in this case and it is not a statement made by him before the Sub-Inspector of Police ,upon which the lower Court has relied. The lower Court has relied upon the evidence given by Anant Shetty in the Court. In the result, there is no substance in the contention that the evidence of Anant Shetty was inadmissible.

9. For all these reasons, we think; there is no ground to interfere either with the convictions or with the sentence imposed upon the accused-applicant. The application must, therefore, fail and the rule will be discharged. The applicant will have to surrender to his bail.

10. Rule discharged.